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by Satria Unggul Wicaksana Prakasa

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Conflicts Of Interest, Private Sector Corruption And Eradication Strategies In Indonesia: Uncac Review

Satria Unggul Wicaksana Prakasa[1], Muhammad Hadin Muhjad[2],Ahmad Fikri Hadin[3]

[1]Faculty of Law University of Muhammadiyah Surabaya, Indonesia
[2,3]Faculty of Law University of Lambung Mangkurat, Indonesia
Correspondence author: afhadin@ulm.ac.id

ABSTRACT:
Conflicts of interest have become a serious problem in criminal acts of corruption in a country, not only have an impact on unfair business competition, but also have an impact on state losses resulting from the practice of criminal acts of corruption, especially with regard to corruption in the private sector This study seeks to reveal the relationship between conflicts of interest and its relation to overcoming competition in the private sector. This study uses a socio-legal approach. The results of this study are the impact of conflicts of interest if not prevented in relation to increased investment in addition to abuse of licensing authority, corruption in the private sector, influence trading, improper wealth, to threats to law enforcement in Indonesia, in addition to weaknesses in legal rules to prevent conflicts of interest. in business activities carried out in Indonesia is also a serious problem. As one of the UNCAC participants, Indonesia is obliged to harmonize and carry out its mandatory obligations to prevent and take action against entities both public officials and individuals / corporations as private entities in order to avoid conflicts of interest and corruption in the private sector. Revitalizing the role of Stranas-PK by involving other strategic instruments, such as civil society organizations, is one of the steps that can prevent conflicts of interest and corruption in the private sector in Indonesia

Keywords:
Conflict of Interest, Private Sector Corruption, UNCAC, KPK-RI

INTRODUCTION

As one of the countries that hopes for an investment that has a positive impact on the stability of economic growth in Indonesia, all efforts have been made by the Government, starting from policy deregulation, ease of licensing, and even supported by regulations that facilitate business activities in Indonesia. On the other hand, corruption in Indonesia has spread to various sectors in Indonesia, which has resulted in an economic loss, distribution and natural resources (SDA) which are far from their initial aspirations for the welfare of society, as well as policies that lead to inefficiencies and regulations on licensing and character. corrupt public officials make the socio-economic situation in Indonesia also not improve (Transparency International Indonesia (TII), 2019).

The case of Belva Devara, a special staff of President Joko Widodo who is the CEO of *digital plaftofm* Ruang Guruwho held a tender to provide training for pre-work cards, which are earmarked for training provided by the Government who received pre-employment cards reaching Rp. 5.6 trillion (Tirto. en, 2020). Including the conflict of interest of Jokowi's former staff member, Andri Taufan Putra Garuda, who is the CEO of Amertha, who sent a letter to the Village Head to take advantage of his position to launch his company's cooperation program with the government through the Ministry of Villages for Disadvantaged Development and Transmigration (Tempo.co, 2020).

These two cases are the iceberg phenomena of various cases of conflicts of interest, either public officials or political affiliations, which affect the world of business and business. The OECD survey in 2018 explained that there is no reason for Indonesia to become one of the countries with the largest economic power in the world, considering that the distribution of*Gross Domestic Product* (GDP) increases from year to year, starting from household products, *government expenditure, gross fixed capital,* to export and import activities carried out by Indonesia. but a vital issue is why the stability of GDP growth does not have an impact on people's welfare, one of which is due to corrupt practices (OECD, 2018).

The practice of conflicts of interest in the process of making legal and policy regulations in Indonesia is in fact difficult to separate from the political-economic situation, this is due to the large number of business actors who also serve in the ranks of Government, as well as become legislators in the People's Representative Council of the Republic of Indonesia

(hereinafter referred to as DPR-RI) , for members of the DPR-RI for the 2019-2024 period alone, of the five (5) DPR-RI leaders, there are four (4) who appear to be business people. And, of the 575 members of the DPR-RI, 262 members of the board are affiliated as entrepreneurs who own or are directors of companies in various fields, this number is at the percentage of 45.6% (The Jakarta Post, 2019). This situation is certainly worrying, considering that various policies and laws are made by those who have a conflict of interest in the interests of running the government on the one hand, as well as business interests owned by business "cronies" on the other.

As one of the participating countries of the *United Nations Convention Against Corruption* (UNCAC), Indonesia is a party and is bound (*binding*) to the Convention because it has ratified Law Number 7 of 2006 including conventions and derivative protocols, as well as other international treaties. relevant to Indonesia's position as a party. Ratifying UNCAC as a real form of Indonesia to the international community (W. Henderson, 2010), that Indonesia is still considered capable (*able*) and willing/committed (*willing*) in efforts to eradicate corruption (Indonesian Corruption Watch, 2015).

The separate consequence for the Indonesian government is that the government is charged with the responsibility of accommodating the clauses in UNCAC so that they can be applied and binding as legal provisions in Indonesia. The crucial point of this international legal action is that ratification is needed in order to become a common standard in qualifying types of crimes as well as mechanisms for handling corruption cases (Agusman, 2014). Various mechanisms of corruption are regulated in UNCAC, including those related to conflicts of interest which are detailed in Articles 7-9 of UNCAC, as well as corruption in the private sector (*bribery in the private sector*) in Articles 21-22 of UNCAC.

On the other hand, the lack of legal political commitment and supported by the lack of legal regulations in the context of dealing with conflicts of interest and corruption in the private sector, it is necessary to refer to the regulations on international agreements, it needs to be studied through a gap analysis between international agreements and Indonesian legislation, how they are implemented in legal practice. and policies, to realize good investment and have an impact on positive economic growth in Indonesia, as well as recognition of conflicts of interest as part of the pattern of corruption in Indonesia, particularly for the Corruption Eradication Commission of the Republic of Indonesia (hereinafter referred to as KPK-RI).

II. PROBLEMS

Based on the background presented above, the formulations of the problems raised in this study are: (1). Conflicts of interest and their relation to private sector corruption in Indonesia; (2). Legal mechanisms in order to prosecute conflicts of interest and their relevance to corruption in the private sector in Indonesia.

III. RESEARCH METHOD

Legal research methods to analyze corruption crimes as international crimes using aapproach socio-legal. The socio-legal approach is a method of legal research that does not only rule the law, but also deepens the context, which includes all processes, for example related to the formation of law to the '*implementation of law*'. The label of socio-legal studies has gradually become a general term covering a group of disciplines that apply a social scientific perspective to legal studies, including legal sociology, legal anthropology, including international law, and legal politics (Tamanaha, 1997).

The socio-legal approach is a combination of approaches within the social sciences, including political science, economics, culture, history, anthropology, communication and a number of other sciences, which are combined with approaches known in legal science, such as learning about principles, doctrine and hierarchy of legislation. The socio-legal approach thus becomes a single concept for the combination. Thus, the legal analysis carried out has a broad and interdisciplinary point of view in describing the issues raised in this study (Wiratraman & Putro, 2019).

The importance of using a socio-legal approach in this research in order to produce a comprehensive perspective not only from a legal perspective, in order to find an analysis of the relationship between conflicts of interest, corruption in the private sector, and its implications for the eradication of corruption in Indonesia from a broader perspective, including in terms of politics and economics which enrich the perspective in this study.

IV. DISCUSSION

A. UNCAC And The International Corruption Eradication Agenda

UN Secretary General's, Kofi Annan in 2004, in his introduction to the adoption of the United Nations Anti-Corruption Convention (UNCAC) stated that corruption is *an insidious plague* that has a wide corrosive impact on society. Corruption weakens democracy and the rule of law, causes human rights violations, destabilizes markets, erodes the quality of life and facilitates organized crime, terrorism and other threats to human security (Aanan, 2004). Such is the danger and destructive nature of corruption that it

requires international cooperation and commitment, followed by commitment in the national legal mechanism to create a strong legal mechanism in order to eradicate corruption throughout the world.

UNCAC, which is the source of international law which was signed on December 18, 2003 in Merida, Mexico, and became a binding international instrument based on UN General Assembly Resolution 58/4 on October 31, 2003, is a comprehensive framework. At UNCAC there are several key words as a reflection of global awareness in the war against corruption agenda. First, the political-law approach during the negotiation process, the strategies and positions of several countries, and the impacted and outcomes obtained by countries after implementing UNCAC in their country's criminal law system. Second, the areas that are prone to corruption that are studied can benefit the countries accommodated by UNCAC, including monitoring and review mechanisms in the context of implementing UNCAC for member countries. Third, opportunities and challenges with an international legal approach related to global commitments against corruption (Webb, 2005).

UNCAC was signed by 140 countries, and until February 2020 there were 187 UNCAC participating countries, both through the mechanism of ratification and accession in accordance with the mechanism for making international agreements. UNCAC is a complete part of the guidelines for participating countries on the corruption eradication agenda, including: (1) Prevention efforts; (2) Formulation of types of crimes including corruption; (3) Law enforcement processes; (4) Provisions for international cooperation as well as the mechanism for asset recovery, especially those that are cross-border. The effective implementation of the provisions in UNCAC can be seen as a reflection of the strong commitment of a country to eradicate corruption, carry out good government and enforce the rule of law, and strengthen democracy in Indonesia (UNODC, 2020).

Various types, motives, and concepts of legal responsibility for corruption have been accommodated in the convention, such as *bribery of foreign affairs, bribery in private sectors, trading of influence, beneficial ownership, illicit enrichment, conflict of interest*, including legal liability for individuals and the private sector that are included in the corruption crime network itself. Based on Article 4, UNCAC still mandates*parties*to respect sovereignty, and makes appropriate legal steps and mechanisms in the context of implementing UNCAC into the national legal system (Prakasa, Babussalam, & Supriyo, 2020).

In addition, the function of UNCAC is also to overcome the limitations of enforcement of corruption eradication around the world who are faced with low legal political commitment due to legislative corruption. Also, it is able to be a solution for all participating countries in taking strategic steps, in overcoming corruption cases which are included in the category of *grand corruption* ¸ criminal mechanisms, asset recovery, to international cooperation between member countries in the eradication of corruption involving cross-border networks (Daniel, 2013). Thus, it is an obligation for UNCAC participating countries to carry out UNCAC's mandate through comprehensive legislation and frameworks, including in anticipating the types and modules of corruption that occur, one of which is related to conflicts of interest and corruption in the private sector.

B. Conflict Of Interests

Susan Rose Ackerman explained that conflicts of interest are problematic in at least two things. The first is the different interests between on the one hand the interests as public officials and regulators, on the other hand, business interests run by individuals who have political access so that it is difficult to distinguish between people which are public interests and which are private interests, so that those affected and disadvantaged from this practice is that the wider community does not have political access, in business activities it also has an impact on unfair business competition (Susan Rose-Ackerman, 2014).

Giovanni Guzzetta, et.al classifies conflicts of interest in two aspects which are “bottom-up” and “top-down” dimensions. In the bottom-up dimension, it means a conflict of interest as a situation where a person experiences a dilemma between his position in personal interests and attempts to manipulate public interests to justify personal interests even though other parties, including their superiors, experience losses for the activities carried out. In another sense that is top-down, which in the classical sense relates to someone who has personal interests and uses his or her power and position to achieve personal interests through bribery / corruption, political patronage / closeness, to nepotistic activities (Giovani Guzzetta, 2008).

OECD to illustrate the practice of conflicts of interest are:"*... a conflict between the public duty and private interests of a public official, in which the public official has private-capacity interest which could improperly influence the performance of their official duties and responsibilities",* (OECD , 2003), this certainly has an impact on the situation of public services running poorly, so that the preference for action of public officials to commit embezzlement, accepting gratuities, and resulting in acts of discrimination in public services carried out will have a very large potential, and the impact on investment

and licensing in a country is against the principle of tra transparent and accountable.

In the context of the definition of conflict of interest made by the United Nations Organization on Drugs and Crimes (UNODC) defines conflicts of interest as:… *Impartiality and professionalism of public officials are prerequisite for the integrity and effectiveness of the public administration. The importance of building the public administration in accordance with the principles of integrity, transparency and accountability, promote transparency and prevent conflicts of interest. Make declarations on outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result… (UNODC, CAC / COSP / WG.4 / 2018/2).* In this aspect, UNODC emphasizes conflicts of interest that have an impact on business aspects, investment, and create unfair trade competition, even lead to trade discrimination that affects market integrity and the feasibility of investing in a country (United Nations, 2013) .

Conflicts of interest in UNCAC are regulated in Article 7-9 UNCAC, as part of the non-compliance of public officials in carrying out their functions, which can be seen in the following table:

Table 1: Conflicts of Interest in UNCAC

Article 7. Public sector	***Article 8. Codes of conduct for public officials***	***Article 9. Public procurement and management of public finances***
1. Each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, endeavor to adopt, maintain and strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants and, where appropriate, other non-elected public officials: *(a) That are based on principles of efficiency, transparency and objective criteria such as merit, equity and aptitude;* *(b) That includes adequate procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption and the rotation, where appropriate, of such individuals to other positions;* *(c) That promote adequate remuneration and equitable pay scales, taking into account the level of economic development of the State Party;* *(d) That promotes education and training programs to enable them to meet the requirements for the correct, honorable and proper performance of public functions and that provide them with specialized and appropriate training to enhance their awareness of the risks of corruption inherent in the* *of their functions. Such programs may make reference to codes or standards of conduct in applicable*	*1. In order to fight corruption, each State Party shall promote, inter alia, integrity, honesty and responsibility among its public officials, in accordance with the fundamental principles of its legal system.* *2. In particular, each State Party shall endeavor to apply, within its own institutional and legal systems, codes or standards of conduct for the correct, honorable and proper performance of public functions.* *3. For the purposes of implementing the provisions of this article, each State Party shall, where appropriate and in accordance with the fundamental* *principles of its legal system, take note of the relevant initiatives of regional, interregional and multilateral organizations, such as the International Code of Conduct for Public Officials contained in the annex to General Assembly resolution 51/59 of 12 December 1996.* *4. Each State Party shall also consider, in accordance with the fundamental principles of its domestic law, establishing measures and systems to facilitate the reporting by public officials of acts of corruption to appropriate* *authorities, when such acts come to their notice in the performance*	*1. Each State Party shall, in accordance with the fundamental principles of its legal system, take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, inter alia, in preventing corruption. Such systems, which may take into account appropriate threshold values in their application, shall address, inter alia:* *(a) The public distribution of information relating to procurement procedures and contracts, including information on invitations to tender and relevant or pertinent information on the award of contracts, allowing potential tenderers sufficient time to prepare and submit their tenders;* *(b) The establishment, in advance, of conditions for participation, including selection and award criteria and tendering rules, and their publication;* *(c) The use of objective and predetermined criteria for public procurement decisions, in order to facilitate the subsequent verification of the correct application of the rules or procedures;* *(d) An effective system of domestic review, including an effective system of appeal, to ensure legal recourse and remedies in the event that the rules or procedures established pursuant to this paragraph are not followed;* *(e) Where appropriate, measures to regulate matters regarding personnel*

Article 7. Public sector	Article 8. Codes of conduct for public officials	Article 9. Public procurement and management of public finances
areas. *2. Each State Party shall also consider adopting appropriate legislative and administrative measures, consistent with the objectives of this Convention* *and in accordance with the fundamental principles of its domestic law, to prescribe criteria concerning candidature for and election to the public office.* *3. Each State Party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and* *in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable , the funding of political parties.* *4. Each State Party shall, in accordance with the fundamental principles of its domestic law, endeavor to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest.*	*of their functions.* *5. Each State Party shall endeavor, where appropriate and in accordance with the fundamental principles of its domestic law, to establish measures*	*responsible for procurement, such as declaration of interest in particular public procurements, screening procedures and training requirements.* *2. Each State Party shall, in accordance with the fundamental principles of its legal system, take appropriate measures to promote transparency and accountability in the management of public finances. Such measures shall encompass, inter alia:* *(a) Procedures for the adoption of the national budget;*

Legal construction stipulated in Articles 7-9 related to conflicts of interest is closely related to maintaining the integrity of public officials in making a comprehensive strategy in order to prevent conflicts of interest for public officials. In the latest developments in the global anti-corruption movement, the important role of the business sector is highly expected in fighting various forms of corrupt practices. Through international cooperation between the heads of countries of the G-20 members, together with the OECD, they formulated the G-20 *Action Plan* to create an anti-corruption movement "*Public-Private Partnership*" which aims to increase integrity-based business activities, and prevent conflicts of interest and efforts. which leads to corrupt practices, so that the business carried out is in line with anti-corruption values (KPK-RI & Ministry of Foreign Affairs of the Republic of Indonesia, 2018).In the context of maintaining the integrity of public officials so as not to be trapped in a conflict of interest over their duties and responsibilities, there are three (3) pillars made by the G20 and the OECD, namely: (1). Develop standards and systems to prevent and address conflicts of interest; (2). Fostering a culture of integrity; (3). Promote effective accountability. In this context, it was later revealed in making standards of behavior for public officials to mainstream the interests of the public, and preventing undue influence, service standards in the public interest and preventing undue influence for personal interests in terms of concurrent positions to abuse of authority, standards of conflict of interest that must be respected by all parties, both public officials and the private sector in order to refrain from conflicts of interest, risk-based approaches in dealing with conflicts of interest, to an open and accountable organizational culture in order to avoid conflicts of interest. (KPK-RI & Ministry of Foreign Affairs of the Republic of Indonesia, 2018).Based on the form and typology of conflicts of interest, there are at least ten (10) types that need to be known related to the authority of public officials (KPK-RI, 2016), which can be identified as follows:

Figure 1: Conflict Model and Conflict of Interest Typology (KPK- RI, 2016)

Conflicts of interest have a domino effect in corrupt practices, if not prevented, conflicts of interest will have an impact on embezzlement, abuse of authority, and transfer of other property to the public sector (Article 17 UNCAC), trading of influence (Article 18 UNCAC), abuse of authority (Article 19 UNCAC), improper addition of wealth (Article 20 UNCAC), embezzlement / corruption in the private sector (Article 22 UNCAC), to complaints / threats against the law enforcement process for criminal acts of corruption (*obstruction of justice*) (Article 25 UNCAC) (Peters, 2012)

UNCAC's mandate to prevent conflicts of interest in participating countries is by: (1). Making national legal regulations in order to support transparency and prevent conflicts of interest (Article 7 paragraph (3)); (2). Creating a code of ethics / technical mechanisms to avoid conflicts of interest for public officials (Article 8 paragraph (6)); (3). Management of procurement of goods and services as well as transparent and accountable public financial management (Article 9 paragraph (1)); and (4). Prevent conflicts of interest in the private sector (Article 12 paragraph (2)) (Boehm. 2009).

The crucial role played by public officials is a sign that there is a need to be careful and prevent the practice of conflicts of interest in exercising the powers given by legislation. Moreover, if these public officials have the authority in the aspects of licensing, capitalization, to regulators in order to invite investment and business activities, so as to avoid the practice of accepting bribes, gratuities, and conflicts of interest that are the forerunners of corruption in the private sector, so that mitigation efforts can be carried out in such a way and the impact on services in the public sector is getting better.

C. Corruption In The Private Sector

Corruption in the private sector has negative implications for the investment climate and also affects the economic growth of a country. Even a destructive effect on economic growth. The study, which was conducted between 2004-2015, shows that several provinces in Indonesia have a high level of vulnerability to corrupt practices, both bribery, licensing corruption, etc. Has a low level of economic growth and even seems to be immobile (Alfada, 2019). Corruption can be a negative factor and the reluctance of investors to invest and run their business in a country that does not create certainty and fair business competition.

Corruption in the private sector for OECD member countries also has an impact on income inequality experienced by nearly 34 OECD member countries that were observed from 1995-2011, meaning that there is a causal relationship between understanding related to corrupt practices which has implications for worsening business competition, resulting in increasingly unequal income. , on the other hand, when corruption can be handled properly, the income of the people in the country will be more positive (Policardo, Carrera, & Risso, 2019).

Market confidence and foreign investment are also affected by the political-economic situation of a country. The presence of strong legislation products to eradicate corruption, strengthening independent corruption institutions, and minimizing the risk of corruption in the private sector is a strong impact of the presence of foreign investment in a country, because foreign investment requires legal certainty and investment security considering bribery, gratuities, and various corrupt steps. that is done, the private entity will suffer losses and clearly have an impact on the profits of the business carried out (Bahoo, Alon, & Paltrinieri, 2020).

Corruption in the private sector and its relation to the enjoyment of profits from the proceeds of corruption is a critical note to measure the progressive understanding of Judges in handling corruption crime cases, and how corporations can be held accountable before the law related to corruption in the private sector as regulated in Articles 21-22 of the UNCAC, namely:

Table 2: Corruption in the Private Sector in UNCAC

Article 16	***Article 21- Bribery in the Private Sector***	***Article 22- Embezzlement of property in the private sector***
1. Each State Party shall adopt such legislative and other measures as may	*Each State Party shall consider adopting such legislative and*	*Each State Party shall consider adopting such legislative and other measures as*

Article 16	Article 21- Bribery in the Private Sector	Article 22- Embezzlement of property in the private sector
be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.	*other measures as may be necessary to establish as criminal offenses, when committed intentionally in the course of economic, financial or commercial activities:* *(a) The promise, offering or giving, directly or indirectly, o-f an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;* *(b) The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or himself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.*	*may be necessary to establish as a criminal offence, when committed intentionally in the course of economic, financial or commercial activities, embezzlement by a person who directs or works, in any capacity, in a private sector entity of any property, private funds or securities or any other thing of value entrusted to him or her by virtue of his or her position.*

The formulation of article 16 and Articles 21-22 of UNCAC provides mandate to participating countries to create effective legal mechanisms in the prevention and eradication of corruption in the private sector, whether that is carried out by multinational corporations in the context of international business or national corporations. A big challenge for law enforcers to prove the responsibility of the law (especially the practice of corruption) committed by corporations will be able to be controlled in law enforcement efforts and it is difficult to identify whether it is the will of the corporation or just the initiative of the corporate leadership. These difficulties make it important for UNCAC participating countries in order to create a comprehensive framework in the context of eradicating corruption in the private sector (Pith & Ivory, 2010).

It is a challenge for a country that is committed to opening its market in order to create preventive mechanisms to enforce the law effectively for private entities, especially corporations, to mainstream anti-corruption principles in their business activities. Because this is the key to the economic development of a country. The Government's efforts to maintain a stable market system require a mechanism intended to oversee corrupt practices in the private sector through legal regulation and effective law enforcement (Krambia-Kapardis, 2016).

Thus, corruption in the private sector becomes a priority which should be holistically regulated by national legal regulations, to create a free market competition, and avoid the impact of the economic crisis caused by the corrupt practices of the business sector carried out by these corporations (Prakasa, 2019). then there needs to be a strategy in anticipating corruption in the private sector, these strategies ranging from prevention to prosecution of corruption in the private sector.

1. Prevention Mechanisms

In the context of prevention mechanisms, there are several strategies that UNCAC participating countries can take to make legal regulations that can be obeyed absolutely by corporations, not only in terms of regulations but also the development of values, ethics, and a culture of healthy business competition and integrity (Mathisen , 2012). The principle of

compliance is a fundamental requirement for realizing a corporation so as not to commit corruption (Tahir, Ibrahim, Zulkafli, & Mushtaq, 2020).

This includes creating an effective anti-corruption mechanism with programs and compliance aimed at business players and company leaders, balanced communication and opportunity, internal risk assessment mechanisms, and requirements for *good corporate governance*, and no less important is that the business is intended not to make bribery that ends on violating the law and prioritizing the principle of sustainability, especially in terms of investment in extractive industries that are not environmentally friendly (Ucar & Staer, 2020). A risk management-based approach in eradicating corruption in the private sector, as well as due diligence between business actors is a risk mitigation that can be offered in preventing corruption in the private sector, so that business competition can run well and healthily (UNODC, 2020).

2. Mechanism Prosecution

In the context of prosecuting corruption in the private sector, one of the fundamental things in this type of corruption is*corporate criminal liability*. In this context there are several models offered in corporate accountability. There are three theoretical models related to corporate accountability in relation to corruption in the private sector, namely: (1). That the actions of the Board of Directors who represent the company do not necessarily become the responsibility of the corporation; (2). A corporation acts alone but its actions are considered as an organ action carried out by the leadership of the company; (3). A corporate action is not considered a natural action (Cronin, 2018). This conceptual model becomes the basis for legal accountability for corporations, one of which is related to corruption in the private sector.

The model of corporate criminal responsibility in the legal mechanism can be seen from two perspectives, both through legal mechanisms and non-legal mechanisms. In non-legal mechanisms (Gutmann & Lucas, 2017), the sanctions imposed on corporations must be based on considerations that create a culture of compliance and mitigate bribery by corporations, through psychological and economic approaches, policy makers must prioritize that business and economic interests must work. (Brodowski, et.al, 2014).

If non-legal efforts fail, then the criminal responsibility mechanism in the judicial system can be implemented either to individuals who act as persons or corporate representatives to account for the criminal acts committed, as well as double imposition if the impact of corruption in the private sector impacts environmental damage (Prakasa, 2018), the concept of *strict liability* is a very strategic option in this industrialization era to prevent environmental damage to corruption in the private sector, especially in the extractive industry (Prihandono & Khairunisa, 2016).

D. Challenges Of Uncovering Coi & Corruption In The Private Sector, And Compliance With UNCAC In Indonesia

Indonesia has a very limited Law Number 31 of 1999 (Law 31/1999) in cracking down on cross-border corruption. Article 16 of Law 31/1999 regulates the prosecution of cross-border corruption that is related to the provision of assistance, opportunities, facilities and information that fall into the categories in Article 2, Article 3, Article 5 - Article 14 of Law 31/1999, subject to action. by the Indonesian legal system (passive nationality principle). Apart from Law 31/1999, there is the Money Laundering Criminal Act (Law 8/2010), Presidential Decree Number 13 of 2018 concerning the Application of the Principle of Recognizing Beneficial Owners of corporations in eradicating money laundering offenses and Terrorism Financing Crimes, as well as other laws in Indonesia.

For Indonesia as one of the UNCAC participating countries, how to build a collaborative system between law enforcers, especially for KPK-RI which is the *leading sector* in eradicating corruption in Indonesia to make UNCAC a guideline in eradicating criminal acts of corruption in Indonesia (Yustitianingtyas, Prakasa, & et.al, 2020), as well as encouraging legal politics from the Government and the DPR in accommodating and making UNCAC derivative regulations on the legal system in Indonesia. as well as future approaches that prioritize public participation in the context of state compliance in eradicating corruption based on UNCAC (Saldi Isra, Yuliandri, Amsari, & Tegnan, 2017).

Regarding legal regulations in handling conflicts of interest in Indonesia, it does not yet have a legal umbrella in the form of a strong and binding law as a derivative of UNCAC (Lord, 2013), but there is a political commitment to state law that needs to be appreciated for the mechanism for preventing conflict of interest, both in terms of Government Regulations, Ministerial Regulations, and included in several articles in the Law relating to regulations for public officials, regulations related to conflicts of interest, namely:

(1). PP No.6 of 1974 concerning Limitation of Activities of Civil Servants in Private Enterprises; (2). Presidential Decree No.10 of 1974 concerning Several Limits on the Activities of Civil Servants in the Context of Empowering the State Apparatus and Simplicity of Life; (3). Government Regulation No. 30 of 1980 on the Discipline of Civil Servants; (4). Ratification of UNCAC in Law No.7 / 2006; (5). PP

Number 53 of 2010 concerning Civil Servant Discipline; (6). PermenPAN-RB No.37 of 2012 concerning General Guidelines for Handling Conflict of Interest; (7). Law No. 23/2014 on Regional Government; (8). Law 30 of 2014 concerning Government Administration; and (9). Government Regulation Number 48 of 2016 concerning Procedures for Imposing Administrative Sanctions.

In national legislation, there are at least 65 Laws / legal regulations at the same level related to the concept of corporate criminal liability that have been regulated in various laws since 1951-2011, starting from Law Emergency No.17 of 1951 Stockpiling of goods, Law No.7 of 1955 concerning Investigation, Prosecution and Economic Crime Justice, to Law No.17 of 2011 concerning state intelligence. The corporate liability regulation is regulated as a special crime - identification of corporations that can be responsible for criminal acts committed in accordance with the requirements and *legal standing* so that they can be processed through existing legal mechanisms (Pokja Team, 2017).

Regarding corporate accountability in criminal acts of corruption, it is quite completely regulated in national legislation, Article 20 of Law No.31 / 1999 on Corruption has provided a legal position regarding the responsibility for corruption, namely: " (1) In the event that a criminal act of corruption is committed by or on behalf of a corporation, charges and criminal charges can be made against the corporation and / or its management. " In a broad sense and there is no limit to whether corporate corruption is carried out by directors at a certain level or can be done by anyone, either based on a work relationship or a business contract, this is what is still a problem to identify (Pohan, 2020).

The presence of the Supreme Court Regulation (Perma) Number 23/2016 is one of the alternative legal regulations to demand corporate criminal liability for both parent / subsidiary corporations, as well as those that are related, including the merger and consolidation of assets in which there is a criminal element, so that responsibility can be held. for these corporations, including for corporations that are bankrupt, cannot be separated from the criminal trap of the corporation (Suhariyanto, 2018). Formally, Perma 23/2016 can be a reference for law enforcers for corporations that commit criminal acts of corruption, as well as bribe public officials, or corporate directors who have affiliations with certain political powers in carrying out business activities that are against the law in Indonesia.

In fact, the Government of Indonesia has attempted to anticipate the link between conflicts of interest and corruption in the private sector through Presidential Regulation No.54 of 2018 concerning the National Strategy for Prevention of Corruption (Stranas-PK), a team consisting of KPK-RI, Ministry of National Development Planning Agency, Ministry of Home Affairs. , The Ministry of PAN-RB, the Office of the Presidential Staff has the authority to synergize anti-corruption, supervision, and prosecution of corruption in the fields of: (1). Licensing and Commerce; (2). State finances; (3). Law Enforcement and Bureaucratic Reform. There are various standards and targets that are carried out and supervised at the central, provincial, and district levels? City is an obligation for Stranas-PK to ensure that corruption does not hinder investment and prioritizes governance and performance effectiveness of public officials in providing public services and avoiding conflicts. interests (TII, 2018).

Given the strategic role that Stranas-PK has, it is necessary to optimize policies and monitoring measures to improve investment and business governance as well as the principle of compliance with public officials so as not to be trapped in conflicts of interest that have great potential for criminal acts of corruption, which have no impact. only against state losses, but also against state financial losses. Therefore, there needs to be a discussion with relevant ministries / agencies to form laws and regulations and change existing regulations to be stronger and binding and give strong authority to Stranas-PK (Susanti, 2019).

V. CONCLUSION

The impact of conflicts of interest if not prevented in relation to increased investment in addition to abuse of licensing authority, corruption in the private sector, influence trading, improper wealth, to threats to law enforcement in Indonesia, in addition to weaknesses in legal rules to prevent conflicts of interest in business activities carried out in Indonesia are also a serious problem, if they cannot be minimized, it will have an impact on notbusiness activities that pay attention to human rights aspects and fulfilling the welfare of the Indonesian carrying outpeople.

Therefore, it is important for Indonesia as one of the UNCAC participants to harmonize and implement mandatory obligation to prevent to act against entities both public officials and individuals / corporations as private entities in order to avoid conflicts of interest and corruption in the private sector. Revitalizing the role of the National Strategy for PK by involving other strategic instruments, such as civil society organizations, is one of the steps that can prevent conflicts of interest and corruption in the private sector in Indonesia.

REFERENCE

- Aanan, K. (2004). Forewood of UNCAC. New York: UN Publisher.

- Agusman, DD (2014). Hukum Perjanjian Internasional: Kajian Teori dan Praktik Indonesia (Cet. Ke-2). Bandung: Refika Aditama.
- Alfada, A. (2019). The destructive effect of corruption on economic growth in Indonesia: A threshold model. Heliyon Vol.5, Issue 10/, 1-14.
- Bahoo, a., Alon, I., & Paltrinieri, A. (2020). Corruption in international business: A review and research agenda. International Business Review, Volume 29, Issue 4, 1-24.
- Boehm, F. (2009). Anti-Corruption in Regulation: a Safeguard for Infrastructure Reform. Competition and Regulation in Network Industries (Sage Journal Publishing) Vol.10, Issue 1, 45-75.
- Brodowski, D., & et.al. (2014). Regulating Corporate Criminal Laibility. New York: Springer Cham Heidelberg.
- Cronin, A. (2018). Corporate Criminality and Liability for Fraud. New York: Routledge.
- Daniel, T. &. (2013). Is the UNCAC an effective deterrent to grand corruption? In J. Horder & P. Alldridge (Eds.), Modern Bribery Law: Comparative Perspectives (pp. 293-327). Cambridge: Cambridge University Press.
- Ellias, S., & Levinkind, S. (2004). Legal Research How to Find & Understand the Law (12th Edition). Berkeley: NOLO.
- Giovani Guzzetta, e. (2008). Conflict of Interest and Public Life: Cross-National Perspective. Massachusets: Cambridge University Press.
- Gutmann, J., & Lucas, V. (2017). Private-Sector Corruption: Measurement and Cultural Origins. Soc Indic Res 138 (Springer Science+Business Media BV), 747–770.
- Indonesian Corruption Watch. (2015). Kajian Implementasi Aturan Trading in Influence Dalam Hukum Nasional. Jakarta: ICW Pres.
- Korporasi, Tim. Pokja. (2017). Tatacara Penanganan Perkara Pidana Korporasi. Jakarta: MA-RI & KPK-RI Publisher.
- KPK-RI. (2006). Identification Gap Analysist Between Laws/Regulations of The Republic of Indonesia and United Nations Convention Against Corruption. Jakarta: KPK Publisher.
- _____. (2016). Pengelolaan Konflik kepentingan. Jakarta: Direktorat Dikyanmas, Deputi Bidang Pencegahan KPK-RI.
- KPK-RI; Kementerian Luar Negeri RI. (2018). Komitmen Indonesia United Convetion Against Corruption (UNCAC) & G20 Anti-Corruption Working Group (ACWG) Tahun 2012-2018. Jakarta: KPK-RI.
- Krambia-Kapardis, M. (2016). Corporate Fraud and Corruption: a Holistic Approach to Preventing Financial Crises. Basingstoke: Palgrave Macmillan.
- Lord, N. (2013). Regulating transnational corporate bribery: Anti-bribery and corruption in the UK and German. Crime Law Soc Change (published by Springer Science+Business Media Dordrecht), 60(1), 127–145.
- Maringka, JS (2018). Ekstradisi Dalam Sistem Peradilan Pidana. Jakarta: Sinar Grafika.
- Mathisen, RH (2012). Understanding success and failure of anti-corruption initiatives. Crime, Law and Social Change, 58(5), 533-549.
- OECD. (2018). OECD Economy Surveys: Indonesia. Paris: OECD.
- Peters, A. (2012). Conflict of interest as a cross-cutting problem of governance. In AP (Eds.), Conflict of Interest in Global, Public and Corporate Governance (pp. 3-38). Cambridge: Cambridge University Press.
- Phillips, J. (nd). The Criminalisation of Trading in Influence in International Anti- Corruption Laws. LLM Thesist, University of the Wstern Cape: Cape Town, 12-14.
- Pith, M., & Ivory, R. (2010). Corporate Criminal Liability: Emergence, Convergence, and Risk. Basel: Springer.
- Pohan, A. (2020, June 23). Korupsi Pejabat Publik Asing dan Korupsi Korporasi. Retrieved from ACLC.KPK.go.id: https://aclc.kpk.go.id/wp-content/uploads/2020/09/Presentasi-A.-Pohan-Unpar-Korupsi-Korporasi.pdf
- Policardo, L., Carrera, EJ, & Risso, WA (2019). Causality between income inequality and corruption in OECD countries. World Development Perspectives Volume 14, 50-79.
- Prakasa, SU (2018). Perdagangan Internasional & HAM: Relasinya dengan Sustainable Development. Jurnal Hukum Novelty 9 (1), 36-53.
- Prakasa, SU (2019). Garuda Indonesia-Rolls Royce Corruption, Transnational Crime, and Eradication Measures. Lentera Hukum, 6(3), 407 424.
- Prakasa, SU (2019). Garuda Indonesia-Rolls Royce Corruption, Transnational Crime, and Eradication Measures . Lentera Hukum, 6(3), 407 424, Dec. 2019.
- Prakasa, SU, Babussalam, B., & Supriyo, A. (2020). Transnational Corruption and Its Impact on Indonesian Jurisdiction. The 2nd International Conference of Law, Government and Social Justice (ICOLGAS 2020) (pp. 43-53). Purwokerto: Advances in Social Science, Education and Humanities Research https://www.atlantis-press.com/proceedings/icolgas-20/125948343.

- Prihandono, I., & Khairunisa, A. (2016). Tanggung Jawab Koorporasi dalam Hukum HAM Internasional. Surabaya: Airlangga University Press.
- Saldi Isra, YF (2017). Obstruction of justice in the effort to eradicate corruption in Indonesia. International Journal of Law, Crime and Justice, Vol.51, 72-83.
- Suhariyanto, B. (2018). Kedudukan Peraturan Mahkamah Agung Nomor 13 Tahun 2016 Dalam Mengatasi Nomor 13 Tahun 2016 Dalam Mengatasi Kendala Penanggulangan Tindak Pidana Korporasi. NEGARA HUKUM: Vol. 9, No. 1, Juni, 101-120.
- Susan Rose-Ackerman, e. (2014). Corruption and Conflict of Interest: a Comparative Law Approach. Cheltenham: Edward Elgar Publishing.
- Susanti, B. (2019, December 10). Pemenuhan Implementasi UNCAC dalam Perspektif Perundang-undangan di Indonesia. Retrieved from ACLC.KPK.go.id: https://www.kpk.go.id /images/Pemenuhan_Implementasi_UNCAC_dalam_Perspektif_Perundang-undangan_Bivitri.pdf
- Tahir, M., Ibrahim, H., Zulkafli, AH, & Mushtaq, M. (2020). Corruption, national culture, law and dividend repatriation policy. Journal of Multinational Financial Management Volumes 57–58, 1-22.
- Tamanaha, BZ (1997). Realistic Socio-Legal Theory: Pragmatism and a Social Theory of Law. Oxford: Clarendon Press.
- Tempo.co. (2018, March 10). KPK Jelaskan Kerumitan Menyidik Kasus E-KTP. (Tempo.co) Retrieved January 1, 2020, from https://nasional.tempo.co/read/1068449/kpk-jelaskan-kerumitan-menyidik-kasus-e-ktp
- Tempo.co. (2020, April 24). Profil Andi Taufan Garuda Putra yang Mundur dari Stafsus Jokowi. Retrieved from bisnis.tempo.co: https://bisnis.tempo.co/read/1335145/profil-andi-taufan-garuda-putra-yang-mundur-dari-stafsus-jokowi
- The Jakarta Post. (2019, October 11). Massive conflict of interest. Retrieved from Thejakartapost.com: https://www.thejakartapost.com/academia/2019/10/11/massive-conflict-of-interest.html
- TII. (2018). Kertas Kebijakan Strategi Nasional Pencegahan Korupsi. Jakarta: TII & AIPJ2.
- Tirto.id. (2020, April 25). Polemik Prakerja Jokowi, Ruangguru, & Belva yang Belum Selesai. Retrieved from Tirto.id: https://tirto.id/polemik-prakerja-jokowi-ruangguru-belva-yang-belum-selesai-eVig
- Transparency International Indonesia (TII). (2019). Anti-Corruption Agency: Strengthening Initiative Assesment of the Indonesia Anti-Corruption Agency 2019. Berlin: Transparency International.
- Ucar, E., & Staer, A. (2020). Local corruption and corporate social responsibility. Journal of Business Research Volume 16, 266-282.
- United Nations. (2013). An Anti-Corruption Ethics and Compliance Programme for Business: A Practical Guide. New York: UNODC Publisher.
- UNODC. (2020). Preventing of Private Corruption (Module Anti-Corruption Series 6th). Palermo: UNODC Publishing. Retrieved from unodc.org.
- UNODC. (2020, February 20). Ratification Status of UNCAC. Retrieved from UNODC.org: https://www.unodc.org/unodc/en/corruption/ratification-status.html
- W.Henderson, C. (2010). Undestanding of International Law. Sussex: Willey-Blackwell.
- Webb, P. (2005). The United Nations Convention Against Corruption: Global. Achievement, or Missed Opportunity. Journal of International Economic Law, Oxford University Press, 8(1), 191–229.
- Wiratraman, HP, & Putro, WD (2019). Tantangan Metode Penelitian Interdisipliner Dalam Pendidikan Hukum Indonesia. Jurnal Mimbar Hukum, 31(3), 403-415.
- Yustitianingtyas, L., Prakasa, SU, & et.al. (2020). Extradition as an Effort to Restore Corruption Perpetrators Who Escape Abroad. TEST Engineering & Management, 83(March/April), 11908 -11918.

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